IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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| CHRISTOPHER RUSSO<br>5511 Westlake Avenue<br>Parma, OH 44129<br><br>Plaintiff<br><br>vs.<br><br>JACQUELINE McCARTHY<br>5817 Velma Avenue<br>Cleveland, OH 44129-1532<br><br>Defendant | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | CASE NO.:<br><br>JUDGE<br><br>COMPLAINT<br><br>JURY DEMAND FILED |

Now comes Plaintiff Christopher Russo ("Plaintiff" or "Russo"), by and through counsel, and for his Complaint against Defendant states as follows:

**PRELIMINARY STATEMENT**

1. This is a civil rights action stemming from an incident that occurred in Massillon, Ohio on April 28, 2016, during which time Plaintiff was subjected to excessive force, assaulted, battered while in the Indian River JCF by Juvenile Parole Officer Jacqueline McCarthy ("Defendant McCarthy"). As a direct and proximate result of the actions and inactions of Defendant, Plaintiff suffered severe physical injuries and endured physical and emotional pain and suffering. Russo seeks compensatory damages, non-economic damages, punitive damages, reasonable attorney fees and costs incurred in this action and such other and further relief as this court deems just and proper.

2. Plaintiff in this civil rights action seeks relief for the Defendant's violations of his rights secured by the 42 U.S.C. § 1983, the United States Constitution, including its Eighth and Fourteenth Amendments.

## JURISDICTION AND VENUE.

3. Plaintiff brings this action to redress violations by Defendant of Plaintiff's rights under the Constitution and laws of the United States.

4. This is an action pursuant to 42 U.S.C. § 1983 and 1985 to redress the deprivation under color of statute, ordinance, regulations, custom or usage of rights, privileges and immunities secured to Plaintiff by the Fourteenth Amendment to the Constitution of the United States, namely, the rights under the Eighth Amendment.

5. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 and 1343(3), which confer original jurisdiction on Federal District Courts in suits to redress the deprivation of rights, privileges and immunities as stated in paragraph six (6) above.

6. The matter in controversy exceed $75,000.00, exclusive of interest and costs.

7. Venue is placed in the Eastern Division, Cleveland Divisional Office of the United States District Court for the Northern District of Ohio pursuant to 28 U.S.C. § 1391(b) and Local Rules of United States District Court for the Northern District of Ohio, Eastern Division.

## JURY TRIAL DEMANDED

8. Plaintiff demands a trial by jury on his claims as pleaded herein.

## PARTIES.

9. At all times relevant, Plaintiff Russo was and is a citizen of the United States of America residing at the Ohio Department of Youth Services facility, Indian River JFC ("ODYS") located in Massillon, Ohio within the Northern District of Ohio.

10. ODYS is a government agency for the State of Ohio

11. At all times relevant, Defendant JPO Jacqueline McCarthy ("Defendant McCarthy") was duly appointed and acting as an employee/agent/officer of the ODYS, an arm of the State of Ohio.

12. At all times relevant, Defendant McCarthy resided in Cuyahoga County, Ohio within the Northern District of Ohio.

13. At all times relevant herein Defendant McCarthy was acting under color of state laws, statutes, ordinances, regulations, policies, customs and/or usages of the State of Ohio and

the ODYS, in the course and scope of her duties as an officer/agent/employee of ODYS.

14. At all times relevant to this complaint, Defendant engaged in the illegal conduct herein mentioned to the injury of Plaintiff and deprived him of his rights, privileges and immunities secured to him by the Eighth and Fourteenth Amendments to the Constitution of the United States and the laws of the United States.

15. By the conduct, acts, and omissions complained herein, Defendant McCarthy violated clearly established constitutional standards under the Eighth and Fourteenth Amendments to the United States Constitution.

16. Defendant McCarthy is a "person" under 42 U.S.C. § 1983.

17. Defendant McCarthy is sued herein in her individual capacity.

**NOTICE OF GRIEVANCE**

18. Plaintiff timely filed a grievance with regard to this matter to the ODYS.

**STATEMENT OF FACTS,**

19. On April 28, 2016, at or about 12:21 p.m. Plaintiff Russo and Defendant McCarthy were in the day room in Unit D, Delta at ODYS.

20. At which time Defendant McCarthy requested Plaintiff to sign a blank authorization form.

21. Plaintiff refused to sign it unless it was completely filled out so he knew what information was being requested.

22. Plaintiff then requested Defendant McCarthy contact his mother to discuss the signing of the authorization form.

23. Plaintiff Russo did sign the rules of parole and the blank authorization under the understanding he and Defendant McCarthy would complete the authorization form.

24. When Defendant McCarthy did not complete filling out the authorization form, Plaintiff asked for the form back.

25. Defendant McCarthy refused this request.

26. Plaintiff then grabbed the authorization form off the table where both were seated.

27. At that moment Defendant McCarthy got up from the table and started screaming offensive things at Plaintiff, grabbed Plaintiff's arm, and began pulling and tugging on it.

28. She then hit Plaintiff in the right shoulder.

29. After which Defendant McCarthy went to the window before rushing towards Plaintiff Russo by taking 5-7 steps. At this time Plaintiff had his arms at his side and was turning his body away from Defendant McCarthy.

30. Defendant McCarthy proceeded to hit/smack Plaintiff on the left side of his face and neck several times.

31. Plaintiff Russo fell to the floor and had an anxiety and/or panic attack.

32. The ODYS recorded the entire incident on its video cameras.

33. The video does not show that Plaintiff Russo touched, pushed, or shoved Defendant McCarthy during this encounter in the day room.

34. Tecca L. Thompson, from Ohio Department of Youth Services, investigated this incident.

35. During the investigation it was determined Defendant McCarthy was not trained in managing youth resistance.

36. Defendant McCarthy admitted during the investigation of this incident that slapping a youth is not appropriate and is not in accordance with the training she received.

37. Ms. Thompson found the force used by Defendant McCarthy to be excessive.

38. Ms. Thompson found that throughout the investigation Defendant McCarthy made false statements on the day of the incident.

39. Ms. Thompson found throughout the course of the investigation Defendant McCarthy engaged in unprofessional behavior.

40. No criminal charges were brought against Defendant McCarthy as a result of this incident.

41. As a result of Ms. Thompson's investigation, Defendant McCarthy tendered her resignation in-lieu of possible disciple.

42. Defendant McCarthy had disciplinary problems in the past.

43. As a result of the events alleged herein, and due directly to the actions taken by Defendant McCarthy, Plaintiff Russo suffered and continues to suffer physical pain, emotional trauma, discomfort, humiliation, fear, anxiety and embarrassment, among other damages.

44. As a direct and proximate result of the acts of Defendant McCarthy, Plaintiff was caused

to obtain medical and psychiatric treatment.

45. On or about May 12, 2016, Plaintiff Russo was released from ODYS.

## FIRST CLAIM FOR RELIEF.

(42 U.S.C. § 1983 Against McCarthy For Excessive Force in Violation Of The Eighth And Fourteenth Amendments)

46. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

47. At the aforementioned times and places, Defendant McCarthy, acting under color of law and within the course and scope of her employment as juvenile parole officer with ODYS, used unnecessary, unreasonable, outrageous and excessive force on Plaintiff in attacking, and assaulting Plaintiff Russo in violation of his rights guaranteed by the Eighth and Fourteenth Amendments of the United States Constitution.

48. The excessive force was done maliciously and sadistically to cause harm that constitutes cruel and unusual punishment. Defendant's actions were premeditated and were in retaliation for the parties verbal disagreement.

49. The use of unnecessary, unreasonable, outrageous and excessive force, by Defendant McCarthy, as described herein, constitutes wanton, willful, reckless, unjustifiable and malicious conduct warranting the imposition of exemplary punitive damages.

50. Faced with the circumstances present at the aforementioned times and place, a reasonably prudent officer/employee/agent, such as Defendant McCarthy, would or should have known that the uses of force described herein violated Plaintiff's clearly established Eighth and Fourteenth Amendment rights to be free from unreasonable and excessive uses of force and seizures.

51. As a direct and proximate result of the use of force by Defendant McCarthy, in violation of Plaintiff's Eighth and Fourteenth Amendment rights, Plaintiff sustained economic and non-economic damages, including, but not limited to, physical injury and physical and emotional pain and suffering and humiliation and was deprived his liberty and was otherwise damaged and/or injured which will continue into the future.

WHEREFORE, Plaintiff prays for judgment against Defendant McCarthy for:

a. Compensatory damages in an amount that will fully and fairly compensate him for his injury, damage and loss;

b. Punitive damages in an amount that will serve to adequately punish and deter the conduct alleged herein;

c. Costs of suit and reasonable attorney fees pursuant to 42 U.S.C. § 1988; and

d. All such other relief which the Court deems appropriate.

Respectfully submitted,

/s/ David A. Hamamey II

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